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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**
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9 Carlos Cortez Diaz,

10 Plaintiff

11 v.

12 Dr. Lee and Dr. Strad Line,

13 Defendants
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Case No. 2:13-cv-02351-JAD-CWH

**Order Adopting in Part Report and
Recommendation [Doc. 5]
and Dismissing Case**

15 Magistrate Judge Carl Hoffman entered a report and recommendation on May 6, 2014,
16 recommending that plaintiff Carlos Cortez Diaz's case be dismissed with prejudice for failure to
17 comply with multiple court orders.¹ Objections were due May 23, 2014. Diaz has filed no
18 objection, nor has he resolved the problems with his multiple *in-forma-pauperis* applications that led
19 to the recommendation for sanctions in this case. The Court considers the report and
20 recommendation because it regards dismissal with prejudice.

21 Federal Rules of Civil Procedure 16(f) and 37(b)(2)(C) require essentially the same analyses
22 when a district court determines whether to dismiss a case for failure to comply with a court order.²
23 Courts weigh five factors: "(1) the public's interest in expeditious resolution of litigation; (2) the
24 court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy
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26 ¹ Doc. 5.

27 ² See *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987) (citations omitted).
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favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions.”³ A plaintiff is not relieved of his obligation to comply with this Court’s rules and procedures simply because he has not retained—or cannot afford to retain—an attorney to represent him.⁴ At the same time, this circuit’s public policy favors liberal construction of pro-se motions.⁵ In addition, dismissing without prejudice would have the effect of sanctioning Diaz in a less drastic manner. The Court also notes that, while Diaz was warned twice that failure to comply with court orders could result in dismissal, these warnings did not reference the possibility of dismissal with prejudice.⁶

Accordingly, and with good cause appearing,

IT IS HEREBY ORDERED that Magistrate Judge Hoffman’s report and recommendation [Doc. 5] is **ADOPTED** consistent with this order.

IT IS FURTHER ORDERED that plaintiff Carlos Cortez Diaz’s case is **DISMISSED** without prejudice and the Clerk is instructed to close this case.

DATED June 4, 2014.



Jennifer A. Dorsey
United States District Judge

³ *Id.* (quoting *Thompson v. Hous. Auth. of the City of L.A.*, 782 F.2d 829, 831 (9th Cir. 1986)) (internal quotation marks omitted).

⁴ *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987) (“Pro se litigants must follow the same rules of procedure that govern other litigants.”); *see also Ghazali v. Moran*, 46 F.3d 52, 54 (9th Cir. 1995) (“Although we construe pleadings liberally in their favor, pro se litigants are bound by the rules of procedure.”); *Jacobsen v. Filler*, 790 F.2d 1362, 1364 (9th Cir. 1986) (“[P]ro se litigants in the ordinary civil case should not be treated more favorably than parties with attorneys of record.”).

⁵ *See Bernhardt v. L.A. Cnty.*, 339 F.3d 920, 925 (9th Cir. 2003) (acknowledging that courts must construe pro se motions and pleadings liberally).

⁶ Doc. 2 at 1; Doc. 4 at 2.